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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HAROLYN RHUE,

Plaintiff and Appellant,

v.

SAM NAM, et al.,

Defendants and Respondents.

B277956

(Los Angeles County  
Super. Ct. No. BC590227)

APPEAL from an Order of the Superior Court of Los Angeles County, Barbara A. Meiers, Judge. Affirmed.

Harolyn Rhue, in pro. per., for Plaintiff and Appellant.

No appearance by Defendants and Respondents.

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Appellant, Harolyn Rhue, appeals from the dismissal of her claims for failure to state a cause of action. Finding that she failed to plead any cognizable legal basis for recovery, we affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

Rhue commenced this action by filing a complaint as a self-represented litigant naming Sam Nam, Signet Domain LLC and Does 1-50 in August 2015. In that complaint, she included no factual allegations describing the role of, or actions taken by, Nam or Signet. She identified her claims for relief as trespass on title, wrongful foreclosure and eviction, quasi contract, “no contract” and intentional infliction of emotional distress; she sought to quiet title in her name and damages of \$5,000,000. The proof of service attached to the complaint showed service attempts at a business which apparently provided postal boxes. Neither defendant appeared. On Rhue’s application, the court entered default against Nam and Signet in December 2015.

In May 2016, the trial court set, on its own motion, a motion to dismiss for failure to state a cause of action. Rhue objected, asserting that she now sought only relief in quiet title, and was no longer pursuing a monetary judgment; she also asserted that the defendants had been properly served.

Rhue appeared at the hearing, represented by counsel, on July 27, 2016. At that time, the court vacated the Nam default, and gave Rhue leave to amend her complaint. Rhue filed instead a motion for reconsideration, providing documentation supporting the service of process in the matter and presenting argument supporting her complaint. The court denied the motion, and granted judgment on the pleadings, or, in the

alternative, dismissal pursuant to Code of Civil Procedure section 436. Rhue appealed.<sup>1</sup>

The settled statement on appeal indicates that the trial court granted judgment on the pleadings and dismissed the complaint on its own motion, after Rhue declined to amend the complaint. The court found the complaint, as filed, was not legally sufficient.

### DISCUSSION

Code of Civil Procedure section 438 permits the trial court, on its own motion, to grant judgment on the pleadings where, as relevant here, the complaint fails to state facts sufficient to constitute a cause of action. (§ 438, subds. (b)(2), and (c)(3) (B)(ii).) We review a judgment on the pleadings de novo. (*Eckler v. Neutrogena Corp.* (2015) 238 Cal.App.4th 433, 439.)

A review of the complaint in this case reveals that the charging allegations fail to identify either Nam or Signet Domain, although their names appear in the caption. The allegations do not describe the causes of action, which are contained in a list without explanation. More importantly, there is no link stated between the facts alleged and the named defendants.

In *Grappo v. McMills* (2017) 11 Cal.App.5th 996, the court was confronted with a situation similar to that presented here. A self-represented litigant filed an action, in which the causes of

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<sup>1</sup> Rhue also filed a writ proceeding in this court, challenging the trial court's refusal to prepare a settled statement for the unreported proceedings. This Court granted the writ, and ordered the trial court to settle the statement on November 28, 2017. (B283248.) The trial court issued its settled statement on March 19, 2018.

action were not clearly set forth, and which was served on a defendant named in the caption, but not otherwise described in the complaint. There, as here, default was entered, but unlike this case, a default judgment was also entered. After a motion for relief was filed, the trial court vacated the judgment, and the plaintiff appealed.

On appeal, the court held that the default judgment should not have been entered because the complaint was inadequate. Among other failings, the complaint failed to describe the people or entities named in the caption, did not link the defendants with the cause of action, and failed to state a claim. (*Grappo, supra*, 11 Cal.App.5th at p. 1014.)

The court explained the trial court's role as gatekeeper in the default situation, where no opposing party appears to challenge the claims. The court must first ensure that the complaint states a cause of action; if it does, the court must not enter default judgment unless the plaintiff has demonstrated entitlement to the relief he or she seeks. (*Grappo, supra*, 11 Cal.App.5th at pp. 1012-1013.)

"Generally, a defendant in default 'confesses the material allegations of the complaint. [Citation.]' (*Taliaferro v. Davis* (1963) 216 Cal.App.2d 398, 408, 31 Cal.Rptr. 164.) Nonetheless, the trial court may not enter a default judgment when the complaint's allegations do not state a cause of action. (*Id.* at pp. 408–414; *Taliaferro v. Taliaferro* (1959) 171 Cal.App.2d 1, 3–9, 339 P.2d 594.) No judgment can rest on such a complaint, as a defendant in default "admits only facts that are well pleaded." (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 829, 26 Cal.Rptr.3d 104, quoting 6 Witkin, Cal. Procedure (4th ed. 1997) Proceedings Without Trial, § 160, p. 574; see *Buck v. Morrossis*

(1952) 114 Cal.App.2d 461, 466, 250 P.2d 270.)” (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 392 [court analyzed allegations of complaint and claim for damages; determining they were sufficient to support the judgment].)

Here, like *Grappo*, but unlike *Los Defensores*, the complaint is not sufficient to support a judgment. Appellant was given leave, and time, to file an amended complaint, but declined to do so. Accordingly, the trial court did not err in entering judgment.

### **DISPOSITION**

The judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.